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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,237	03/08/2001	Christopher Keith	125472	7700
52531 7590 03/13/2008 CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347			EXAMINER GRAHAM, CLEMENT B	
			ART UNIT 3692	PAPER NUMBER
			MAIL DATE 03/13/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/802,237

**Applicant(s)**

KEITH, CHRISTOPHER

**Examiner**

CLEMENT B. GRAHAM

**Art Unit**

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

**DETAILED ACTION**

1. Claims 1-28 remained pending.

**Claim Rejections - 35 USC § 101**

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 4, 12, 15, 23, are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Applicant's claims are directed to an algorithm. Specifically, claims recites "sending "receiving report" , however these steps are mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, for example) and abstract ideas without a practical application are found to be non-statutory subject matter. Therefore, Applicant's claims are non-statutory as they do not produce a useful, concrete and tangible result.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-28, are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutterman et al (Hereinafter Gutterman US Patent No 5, 297, 031) in view of Nelson US Patent No 4, 823, 265).

As per claims 1-2, Gutterman discloses a method of facilitating trading, comprising: automatically via a computer sending a trial order("i. e, order") to a market wherein the trial order identifies an item to trade and indicates a quantity and price for the item, and wherein the trial order differs from a regular order in that when the trial order is paired with a contra-side order, the quantity in the trial order is automatically set to zero and automatically, via the computer receiving a report ("i. e, displaying orders") indicating that the trial order would have

been paired for the indicated quantity had been a regular order and wherein a trial order is for discovery of current market depth at a price and is. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

Gutterman fail to explicitly teach does not result in a trade.

However Nelson discloses the current market price of the underlying security is listed on the display. Offer prices are listed according to strike prices which may (as shown) be described in set increments, or may be equal to or related to the current market price of the security. Bid (buyer offer) and asked (written offer) prices are also listed for each strike price. Alternatively, a single price representing the current market price of the renewable option at each strike price may be listed. As a third alternative, the price of each renewable option may also be set by the listing agent or the writing agent for the listing agent if the market is generated internally by the listing agent rather than through a multi-access exchange. Prices may even be set by standardized formulas. Prices may obviously be affected by a variety of factors, but writers may well choose to list the price of the renewable options as a fixed percent of the strike/market price on the basis of prevailing interest rates and stock dividends yields, for example. (see column 6 lines 3-21 and column 8 lines 53-60 and column 9 lines 18-28).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Gutterman to include does not result in a trade taught by Nelson in order to provide price information or advice on various orders.

As per claim 3, Gutterman discloses, wherein the automatically sending and receiving are performed by a trading process. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 4, 8, 10-11, Gutterman discloses a method of facilitating trading, comprising: automatically via a computer receiving a trial order, wherein the trial order identifies an item to trade and indicates a quantity and price for the item, and wherein the trial order differs from a regular order in that when the trial order is paired with a contra-side order, the quantity in the trial order is automatically set to zero automatically via a computer entering the trial order into an order market. ("i. e, conditional order "see column 2 lines 5-67") and automatically reporting ("i. e, displaying information on each order") when the trial order would

have been paired had it been a regular order and wherein a trial order is for discovery of current market depth at a price and is not. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

Gutterman fail to explicitly teach does not result in a trade.

However Nelson discloses the current market price of the underlying security is listed on the display. Offer prices are listed according to strike prices which may (as shown) be described in set increments, or may be equal to or related to the current market price of the security. Bid (buyer offer) and asked (written offer) prices are also listed for each strike price. Alternatively, a single price representing the current market price of the renewable option at each strike price may be listed. As a third alternative, the price of each renewable option may also be set by the listing agent or the writing agent for the listing agent if the market is generated internally by the listing agent rather than through a multi-access exchange. Prices may even be set by standardized formulas. Prices may obviously be affected by a variety of factors, but writers may well choose to list the price of the renewable options as a fixed percent of the strike/market price on the basis of prevailing interest rates and stock dividends yields, for example. (see column 6 lines 3-21 and column 8 lines 53-60 and column 9 lines 18-28).  
(see column 2 lines 5-67).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Gutterman to include does not result in a trade taught by Nelson in order to provide price information or advice on various orders.

As per claim 5, Gutterman discloses, further comprising selecting the trial order for pairing with an active side order without affecting the pairing priority of other orders in the order file. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claim 6, Gutterman discloses, wherein the automatically reporting includes sending a pairing report for zero shares to a source of the trial order. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claim 7, Gutterman discloses, wherein the pairing report includes the price at which the trial order would have been paired had it been a regular order. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claim 9, Gutterman discloses automatically removing the trial order from the order file after reporting when it would have been paired. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 12, Gutterman discloses a system configured to facilitate trading, comprising:

a computing component configured to send a trial order("i. e, order") to a market wherein the trial order identifies an item to trade and indicates a quantity and price for the item, and wherein the trial order differs from a regular order in that when the trial order is paired with a contra-side order, the quantity in the trial order is automatically set to zero and wherein the component is further configured to receive a report therefrom indicating that the trial order would have been paired for the indicated quantity had been a regular order, wherein a trial order is for discovery of current market depth at a price. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

Gutterman fail to explicitly teach does not result in a trade.

However Nelson discloses the current market price of the underlying security is listed on the display. Offer prices are listed according to strike prices which may (as shown) be described in set increments, or may be equal to or related to the current market price of the security. Bid (buyer offer) and asked (written offer) prices are also listed for each strike price. Alternatively, a single price representing the current market price of the renewable option at each strike price may be listed. As a third alternative, the price of each renewable option may also be set by the listing agent or the writing agent for the listing agent if the market is generated internally by the listing agent rather than through a multi-access exchange. Prices may even be set by standardized formulas. Prices may obviously be affected by a variety of factors, but writers may well choose to list the price of the renewable options as a fixed percent of the strike/market

price on the basis of prevailing interest rates and stock dividends yields, for example. (see column 6 lines 3-21 and column 8 lines 53-60 and column 9 lines 18-28).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Gutterman to include does not result in a trade taught by Nelson in order to provide price information or advice on various orders.

As per claims 13, Gutterman discloses wherein the report received by the computing component also indicates the price at which the trial order would have been paired if it had been a regular order. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 14, Gutterman discloses computing component is configured to execute a trading process that sends the trial order and receives the report. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 15, Gutterman discloses a system configured to facilitate trading, comprising:

one or more computing components configured to receive a trial order, market wherein the trial order identifies an item to trade and indicates a quantity and price for the item, and wherein the trial order differs from a regular order in that when the trial order is paired with a contra-side order, the quantity in the trial order is automatically set to zero wherein the trial order is for discovery of current market depth at a price and is not an order to buy or sell, said one or more computing components being further configured to enter the trial order into an order file and report when the trial order would have been paired had it been a regular order. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

Gutterman fail to explicitly teach does not result in a trade.

However Nelson discloses the current market price of the underlying security is listed on the display. Offer prices are listed according to strike prices which may (as shown) be described in set increments, or may be equal to or related to the current market price of the security. Bid (buyer offer) and asked (written offer) prices are also listed for each strike price. Alternatively, a single price representing the current market

price of the renewable option at each strike price may be listed. As a third alternative, the price of each renewable option may also be set by the listing agent or the writing agent for the listing agent if the market is generated internally by the listing agent rather than through a multi-access exchange. Prices may even be set by standardized formulas. Prices may obviously be affected by a variety of factors, but writers may well choose to list the price of the renewable options as a fixed percent of the strike/market price on the basis of prevailing interest rates and stock dividends yields, for example. (see column 6 lines 3-21 and column 8 lines 53-60 and column 9 lines 18-28).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Gutterman to include does not result in a trade taught by Nelson in order to provide price information or advice on various orders.

As per claims 16, Gutterman discloses wherein said one or more computing components are further configured to select the trial order for pairing with an active side order without affecting the pairing priority of other orders in the order file. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 17, Gutterman discloses wherein said one or more computing components are configured to report when the trial order would have been paired by sending a pairing report for zero shares to a source of the trial order. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 18, Gutterman discloses wherein the pairing report includes the price at which the trial order would have been paired had it been a regular order. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 19, Gutterman discloses wherein said one or more computing components are further configured to automatically respond to market inquiries based on orders in the order file other than the trial order. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).



As per claims 20, Gutterman discloses wherein said one or more computing components are further configured to automatically remove the trial order from the order file after reporting when it would have been paired. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 21, Gutterman discloses wherein said one or more computing components are configured to execute a market process that performs the receiving, entering and reporting. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 22, Gutterman discloses wherein said one or more computing components are configured to receive the trial order from a trading process. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 23, Gutterman discloses a computer-accessible medium having executable instructions stored thereon for facilitating trading at a market, wherein the instructions, when executed, cause a computer to:

order, receive a trial order, enter the trial order into an order file, and report when the trial order would have been paired at the market had it been a regular wherein a trial order is for discovery of current market depth at a price and. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

Gutterman fail to explicitly teach does not result in a trade.

However Nelson discloses the current market price of the underlying security is listed on the display. Offer prices are listed according to strike prices which may (as shown) be described in set increments, or may be equal to or related to the current market price of the security. Bid (buyer offer) and asked (written offer) prices are also listed for each strike price. Alternatively, a single price representing the current market price of the renewable option at each strike price may be listed. As a third alternative, the price of each renewable option may also be set by the listing agent or the writing agent for the listing agent if the market is generated internally by the listing agent rather than through a multi-access exchange. Prices may even be set by standardized

formulas. Prices may obviously be affected by a variety of factors, but writers may well choose to list the price of the renewable options as a fixed percent of the strike/market price on the basis of prevailing interest rates and stock dividends yields, for example. (see column 6 lines 3-21 and column 8 lines 53-60 and column 9 lines 18-28).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Gutterman to include does not result in a trade taught by Nelson in order to provide price information or advice on various orders.

As per claims 24, Gutterman discloses wherein the executable instructions further cause the computer to select the trial order for pairing with an active side order without affecting the pairing priority of other orders in the order file. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 25, Gutterman discloses wherein the instructions, when executed, cause the computer to send a pairing report for zero shares to a source of the trial order. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 26, Gutterman discloses wherein the pairing report includes the price at which the trial order would have been paired had it been a regular order. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 27, Gutterman wherein the executable instructions further cause the computer to respond to market inquiries based on orders in the order file other than the trial order. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

As per claims 28, Gutterman discloses wherein the executable instructions further cause the computer to remove the trial order from the order file after reporting when it would have been paired. (Note abstract see column 7 lines 45-67 and column 8 lines 1-32 and column 5 lines 59-67 and column 6 lines 1-67).

## **Conclusion**

Art Unit: 3692

**Response to arguments**

5. Applicant's arguments filed on 10/31/200 has been considered but they are moot in view of new grounds of rejections.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B Graham whose telephone number is 571-272-6795. The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantzy Ponvil can be reached on 703-305-9779. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-0040 for regular communications and 703-305-0040 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

CG

Jan 20, 2008

  
FRANTZY POINVIL  
PRIMARY EXAMINER  
*AU 3692*